



**BILLING CODE: 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**46 CFR Part 298**

**[Docket Number MARAD-2014-0011]**

**Proposed Policy: “Other Relevant Criteria” for Consideration when Evaluating the Economic Soundness of Applications under the Title XI Maritime Guaranteed Loan Program**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Proposed policy.

**SUMMARY:** This document provides interested parties with the opportunity to comment on the proposed policy regarding the factors the Maritime Administration (“MARAD”) will consider in its review of applications for the Title XI Maritime Guaranteed Loan Program (“Title XI”). MARAD’s proposed policy is intended to further promote the modernization of the U.S. Merchant Marine and U.S. shipyards through the construction or reconstruction (to include repowering) of vessels.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. MARAD will consider comments filed after this date to the maximum extent practicable.

**ADDRESSES:** Comments identified by Department of Transportation (“DOT”) Docket Number MARAD-2014-0011 may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search MARAD-2014-0011 and follow the instructions for submitting comments.

- Fax: (202) 493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- Hand Delivery/Courier: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you fax, mail or hand deliver your input we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing.

*Special Instructions:* All submissions received must include the agency name and docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments and additional information on the process, see the section entitled **Public Participation**.

**FOR FURTHER INFORMATION CONTACT:** Owen Doherty, Acting Administrator for Business and Finance Development, Maritime Administration, Telephone: 202-366-1883, Email: [owen.doherty@dot.gov](mailto:owen.doherty@dot.gov). If you have questions on viewing the Docket, call Barbara Hairston,

Acting Program Manager, Docket Operations, telephone: 202-366-9826. Additional background information may be found at [www.MARAD.dot.gov](http://www.MARAD.dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

The primary purpose of Title XI is to promote the growth and modernization of the U.S. Merchant Marine and U.S. shipyards. Title XI promotes such growth and modernization by providing loan guarantees to sustain vessel construction and repair capacity, create jobs, support development and utilization of emerging technologies, as well as encouraging private investment in the maritime industry. The legislative history of Title XI reflects the evolution of the program over its 78 year history to respond to these contemporary issues and national priorities.<sup>1</sup> Additions over time have included job creation, new vessel safety measures, small shipyard growth, environmental technologies, increased efficiency in the maritime industry through modernization and national defense.

Under 46 U.S.C. 53702(a), Title XI is a discretionary program. Chapter 537 of Title 46 of the United States Code and part 298 of title 46 of the Code of Federal Regulations (CFR) detail the factors MARAD must consider in processing Title XI loan guarantee applications. These authorities require MARAD to consider economic soundness, project feasibility and specifically enumerated priorities for processing when evaluating whether to approve or deny a Title XI application.

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<sup>1</sup> For example, the Ship Financing Act of 1972 demonstrated Congress' focus on new environmental technologies, among other things, by making pollution treatment, abatement, or control vessels eligible for Title XI guarantees, See Pub. L. 92-507, section 1, 86 Stat. 909, as amended, now codified at 46 U.S.C. 53701(14)(K). In the 1990s, Congress amended Title XI to redevelop the U.S. maritime industrial base and rebuild the nation's shipyards. See National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103-160, section 1352, 107 Stat. 1812. In recent years, Title XI's focus on national security has grown with priorities focused on national defense tank vessels and naval auxiliary vessels. See National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-36, section 3544, 117 Stat. 1392, as amended, now codified at 46 U.S.C. 53706(c)(1).

For the required economic soundness determination, 46 U.S.C. 53708(a) provides six mandatory factors to consider when evaluating economic soundness.<sup>2</sup> The accompanying regulation 46 CFR 298.14(b) sets forth “[b]asic feasibility factors” but notes that “all relevant factors” are required to be considered prior to a determination of economic soundness.<sup>3</sup>

Both 46 U.S.C. 53708(a)(5) and 46 CFR 298.14(b)(6) expressly allow MARAD to consider “other relevant criteria” in addition to those enumerated in the statute and regulation when making findings of economic soundness, provided it is reasonable in doing so. Although not an exhaustive list, examples of “other relevant criteria” MARAD may consider, as appropriate, when evaluating economic soundness include, but are not limited to, availability of funding, sensitivity and concentration of the agency loan guarantee portfolio, utilization of America’s Marine Highways and designated corridors, and synergy with the DOT Strategic Plan; as well as any factors contained within 46 CFR chapter 2, subpart D with a bearing on the economic soundness of a Title XI loan guarantee application. Examples of such factors from subpart D include, but are not limited to, guarantees for less than the normal term for that class of vessel, degrees of risk involved with different applications and influence on existing Title XI guarantees.

In addition to the factors enumerated above, MARAD also proposes to consider various environmental initiatives that are likely to increase efficiency and lead to future cost savings as “other relevant criteria” in its evaluation of Title XI loan guarantee applications. The consideration of such initiatives is consistent not only with previous Congressional priorities, but also with the programmatic imperative to remain current with emerging standards, trends and

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<sup>2</sup> See Reference 46 U.S.C. 53708(a)

<sup>3</sup> See Reference 46 CFR 298.14(b)

critical needs. Some of these initiatives may include alternative fuel system designs, fuel cells, hybrid propulsion systems, air emissions reduction technologies, ballast water treatment technologies, or other environmentally-friendly designs.

Today, it is feasible to construct and/or repower vessels to incorporate alternative energy technologies and fuels,<sup>4</sup> environmentally-friendly designs and other technologies that improve the environmental sustainability of vessel operations. The demand for environmentally friendly designs, fuels and technologies is growing rapidly throughout the maritime industry because, among other things, they meet new air emissions and other discharge standards, and also present the potential for greater efficiencies and cost savings. MARAD seeks to promote, through Title XI, projects that provide more environmentally sustainable marine transportation. Consideration of these factors as “other relevant criteria” within an application’s economic soundness determination would complement the other such criteria that MARAD already considers in the evaluation of an application’s economic soundness, which include but are not limited to the factors identified above. MARAD notes, in particular, that many of the economic benefits of environmentally friendly designs, fuels and technologies take the form of public benefits that cannot be captured by a vessel’s owner and operator in the form of freight rates or passenger fees, but which may be valuable to society because of improved human health from air and water quality. Economists and environmental experts can often quantify these benefits in monetary terms or treat them qualitatively. Achieving these benefits is consistent with the DOT Strategic Plan (under the goal of environmental sustainability) and other Federal, State and local objectives. As such, MARAD intends to include as a contributing factor to Federal decisions to award Title XI loan guarantees whether approval will help a vessel meet or exceed

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<sup>4</sup> MARAD defines alternative energy and fuels as energy derived from non-traditional sources (including but not limited to liquefied or compressed natural gas, bio-fuels, solar and wind).

environmental standards. MARAD will consider the comments received on this proposed policy in formulating a final notice of policy.

### **Public Participation**

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number in your comments. MARAD encourages you to provide concise comments. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**.

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue, SE, Washington, DC 20590. When you send comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, MARAD will also consider comments received after that date. If a comment is received too late for MARAD to consider in developing a final policy, MARAD will consider that comment as an informal suggestion for future guidance.

For access to the docket to read background documents, or to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New

Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at <http://www.regulations.gov>., keyword search MARAD-2014-0011.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

### **Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) in the Federal Register published on January 17, 2008, (73 FR 3316) at <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

(Authority: 46 U.S.C. 53708)

**Dated: February 18, 2014.**

**By Order of the Maritime Administrator:**

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**Christine S. Gurland,**  
**Acting Secretary, Maritime Administration.**

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